



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 2, 1993

Mr. Edward W. Dunbar  
Christie, Berry & Dunbar  
1700 North Stanton  
El Paso, Texas 79902

OR93-498

Dear Mr. Dunbar:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 20292.

The El Paso Community College District (the "college district"), which you represent, has received a request for certain personnel file information. Specifically, the requestor seeks nine categories of information:

1. All posted agendas for the EPCC Board of Trustees for the past 6 months.
2. Minutes for the above mentioned Board of Trustee Meetings.
3. Any and all documentation pursuant to Mr. Ochoa's employment with EPCC and any file kept by:
  - a. personnel office
  - b. Deans
  - c. Department Chairs
  - d. President and Vice President
  - e. and any other individual that has documentation concerning Mr. Ochoa's employment.
4. Copies of all student complaint forms.
5. EPCC student complaint policies and procedures.

6. Transcript of the taped meeting of February 24, 1993.
7. Written procedures for the appeal to the Board of Trustees.
8. Names, addresses, and phone numbers of all potential witnesses on behalf of EPCC.
9. Name, addresses, and phone numbers of the hearing officer or person(s) representing EPCC in this matter.

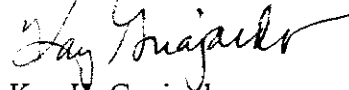
You advise us that you do not object to release of some of the requested information. You object, however, to release of information responsive to items 3 and 4 above. You have submitted to us for review representative samples of this information and claim that it is excepted from required public disclosure by sections 3(a)(1), 3(a)(3), 3(a)(11), 3(a)(14), and 14(e) of the Open Records Act. Because you do not comment on the remaining items requested, we assume that information responsive thereto has been or will be made available to the requestor. *See* Open Records Decision No. 363 (1983).

You contend that the information at issue here may be withheld from the public pursuant to section 3(a)(3) of the Open Records Act. To secure the protection of section 3(a)(3), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 3(a)(3); the requested records may therefore be withheld. *See* Open Records Decision No. 386 (1983) at 2 (pendency of complaint before the Equal Employment Opportunity Commission indicates substantial likelihood of litigation).

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 3(a)(3). We also note that the applicability of section 3(a)(3) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Opinion Committee

KHG/GCK/jmn

Ref.: ID# 20292  
ID# 20138

cc: Ms. Janet Zitzer  
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